

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MATTHEW BENINCASA,

Plaintiff,

v.

**JACK DANIELS AUDI OF UPPER SADDLE
RIVER, INC.,**

Defendant.

Civ. No. 17-6322

(KM)(MAH)

ORDER

IT APPEARING that the plaintiff has filed a motion (ECF no. 4) for a default judgment; and

IT FURTHER APPEARING that the defendant has filed a response (ECF no. 7), and the plaintiff a reply (ECF no. 8); and

IT FURTHER APPEARING that counsel entered an appearance for the defendant three days after the Clerk's entry of default (ECF no. 6), and has explained that the default was inadvertent; and

IT FURTHER APPEARING that the court is to exercise its discretion so as to resolve all doubts in favor of reaching the merits;¹ and

IT FURTHER APPEARING that there is no apparent prejudice to the plaintiff, that the defendant's position as to arbitrability has record support, and that counsel's lapse, while discourteous and deserving of criticism, was not seriously culpable;²

IT IS this 18th day of January, 2018


¹ *Gross v. Stereo Component Sys. Inc.*, 700 F.2d 120, 122 (3d Cir. 1983); *Feliciano v. Reliant Tooling Co.*, 691 F.2d 653, 656 (3d Cir. 1982).

² *See* Fed. R. Civ. P. 55(c); *Budget Blinds, Inc. v. White*, 536 F.3d 244, 256-57 (3d Cir. 2008)

ORDERED as follows:

1. The motion for a default judgment (ECF no. 4) is DENIED, and the Clerk's entry of default is vacated.

2. The Court will therefore consider the defendant's cross motion to dismiss and compel arbitration (ECF no. 9). Within **seven days** after the date of this Order, the parties shall submit affidavits, not to exceed five pages, as to the existence, corporate status, and relationships among Jack Daniels Audi of Upper Saddle River, Inc., Jack Daniels Motors, and any other relevant entities.



Hon. Kevin McNulty
United States District Judge